



General Assembly

Amendment

January Session, 2005

LCO No. 7493

SB0123207493SD0

Offered by:

SEN. DAILY, 33rd Dist.

REP. STAPLES, 96th Dist.

To: Subst. Senate Bill No. **1232**

File No. 417

Cal. No. 322

***"AN ACT CONCERNING CERTAIN TAXES ADMINISTERED BY
THE DEPARTMENT OF REVENUE SERVICES."***

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (a) of section 12-285b of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective July*
5 *1, 2005*):

6 (a) Every tobacco product manufacturer, as defined in section 4-28h,
7 selling cigarettes to consumers within this state, whether directly or
8 through a distributor, dealer, or similar intermediary or
9 intermediaries, shall secure a cigarette manufacturer's license from the
10 Commissioner of Revenue Services. Such license shall be renewable
11 annually. The annual fee for a cigarette manufacturer's license shall be
12 five thousand dollars. The commissioner shall not include or retain in
13 the directory of tobacco product manufacturers developed and
14 maintained in accordance with section 4-28m, as amended by this act,

15 the name or brand families of any tobacco product manufacturer that
16 has failed to secure and retain a cigarette manufacturer's license in
17 accordance with this section.

18 Sec. 2. Subdivision (20) of subsection (a) of section 12-213 of the
19 general statutes is repealed and the following is substituted in lieu
20 thereof (*Effective from passage and applicable to taxable years commencing*
21 *on or after January 1, 2005*):

22 (20) (A) "Carrying on or doing business" means and includes each
23 and every act, power or privilege exercised or enjoyed in this state, as
24 an incident to, or by virtue of, the powers and privileges acquired by
25 the nature of any organization whether the form of existence is
26 corporate, associate, joint stock company or fiduciary, and includes the
27 direct or indirect engaging in, transacting or conducting of activity in
28 this state by an electric supplier, as defined in section 16-1, or
29 generation entity or affiliate, as defined in section 16-1, for the purpose
30 of establishing or maintaining a market for the sale of electricity or of
31 electric generation services, as defined in section 16-1, to end use
32 customers located in this state through the use of the transmission or
33 distribution facilities of an electric distribution company, as defined in
34 section 16-1, or, until unbundled in accordance with section 16-244e,
35 electric company, as defined in section 16-1;

36 (B) A company that has contracted with a commercial printer for
37 printing and distribution of printed material shall not be deemed to be
38 carrying on or doing business in this state because of (i) the ownership
39 or leasing by that company of tangible or intangible personal property
40 located at the premises of the commercial printer in this state, (ii) the
41 sale by that company of property of any kind produced or processed at
42 and shipped or distributed from the premises of the commercial
43 printer in this state, (iii) the activities of that company's employees or
44 agents at the premises of the commercial printer in this state, which
45 activities relate to quality control, distribution or printing services
46 performed by the printer, or (iv) the activities of any kind performed
47 by the commercial printer in this state for or on behalf of that

48 company;

49 (C) A company that participates in a trade show or shows at the
50 convention center, as defined in subdivision (3) of section 32-600, shall
51 not be deemed to be carrying on or doing business in this state,
52 regardless of whether the company has employees or other staff
53 present at such trade shows, provided such company's activity at such
54 trade shows is limited to displaying goods or promoting services, no
55 sales are made, any orders received are sent outside this state for
56 acceptance or rejection and are filled from outside this state, and
57 provided further that such participation is not more than fourteen
58 days, or part thereof, in the aggregate during the company's income
59 year for federal income tax purposes.

60 Sec. 3. Subsection (b) of section 12-293a of the general statutes is
61 repealed and the following is substituted in lieu thereof (*Effective from*
62 *passage*):

63 (b) Each licensed distributor or dealer who owns or operates [more
64 than five] cigarette vending machines shall file a report with the
65 Commissioner of Revenue Services, [on or before the fifteenth day of
66 each month, a report] at such time and in such form as the
67 commissioner may prescribe. [for the calendar month immediately
68 preceding, which report shall disclose the number of cigarette vending
69 machines owned, operated, acquired and disposed of by him, together
70 with such other information as the commissioner shall require. Each
71 licensed distributor or dealer who owns or operates not more than five
72 cigarette vending machines shall file such report with the
73 commissioner semiannually, at such time and in such form as the
74 commissioner may prescribe.]

75 Sec. 4. Section 12-330d of the general statutes is repealed and the
76 following is substituted in lieu thereof (*Effective October 1, 2005, and*
77 *applicable to returns for periods commencing on or after October 1, 2005*):

78 (a) [Each] Except as otherwise provided in subsection (b) of this
79 section, each licensed distributor and each licensed unclassified

80 importer shall file with the commissioner, on or before the twenty-fifth
81 day of each month, a report for the calendar month immediately
82 preceding in such form and containing such information as the
83 commissioner may prescribe. The return shall be accompanied by a
84 payment of the amount of the tax shown to be due thereon. [The
85 commissioner may, by regulations adopted in accordance with chapter
86 54, require that each distributor and unclassified importer report the
87 names and addresses of its customers, if any, annually, with changes in
88 such lists to be reported to the commissioner monthly not later than
89 the tenth day of each month.] If any person fails to pay the amount of
90 tax reported due on its report within the time specified under this
91 section, there shall be imposed a penalty equal to ten per cent of such
92 amount due and unpaid, or fifty dollars, whichever is greater. Such
93 amount shall bear interest at the rate of one per cent per month or
94 fraction thereof, from the due date of such tax until the date of
95 payment. Subject to the provisions of section 12-3a, the commissioner
96 may waive all or part of the penalties provided under this chapter
97 when it is proven to the commissioner's satisfaction that the failure to
98 pay any tax was due to reasonable cause and was not intentional or
99 due to neglect.

100 (b) (1) Each licensed distributor who does not acquire untaxed
101 tobacco products shall file with the commissioner, on or before the
102 twenty-fifth day of each July, a report for the twelve-month period
103 ending the June thirtieth immediately preceding, in such form and
104 containing such information as the commissioner may prescribe, and
105 bearing notice to the effect that false statements made in such report
106 are punishable. As used in this section, "untaxed tobacco products"
107 means tobacco products other than taxed tobacco products; and "taxed
108 tobacco products" means tobacco products which are acquired from a
109 licensed distributor who does acquire untaxed tobacco products and
110 who is subject to and required to pay the tax imposed under this
111 chapter on such tobacco products. Each distributor required to file an
112 annual report shall maintain records that detail (A) the persons from
113 whom, the quantities in which and the dates on which tobacco
114 products were acquired by the distributor; (B) the persons to whom,

115 the quantities in which and the dates on which such tobacco products
116 were sold by the distributor; and (C) any other information deemed
117 necessary by the commissioner.

118 (2) If, in the commissioner's discretion, the enforcement of this
119 chapter would not be adversely affected, the commissioner, by
120 regulation adopted pursuant to this chapter, may exempt unclassified
121 importers from the licensing requirements of section 12-330b and from
122 the monthly reporting requirements of this section and, in lieu thereof,
123 may require unclassified importers having untaxed tobacco products
124 in their possession, not later than twenty-four hours after coming into
125 possession of such untaxed tobacco products, (A) to file a report with
126 the commissioner in such form as the commissioner prescribes and
127 bearing notice to the effect that false statements made in such report
128 are punishable, and (B) to pay the amount of tax shown to be due
129 thereon.

130 Sec. 5. Subdivision (15) of subsection (a) of section 12-407 of the
131 general statutes is repealed and the following is substituted in lieu
132 thereof (*Effective from passage and applicable to taxable years commencing*
133 *on or after January 1, 2005*):

134 (15) (A) "Engaged in business in the state" means and includes but
135 shall not be limited to the following acts or methods of transacting
136 business: (i) Selling in this state, or any activity in this state in
137 connection with selling in this state, tangible personal property for use,
138 storage or consumption within the state; (ii) engaging in the transfer
139 for a consideration of the occupancy of any room or rooms in a hotel or
140 lodging house for a period of thirty consecutive calendar days or less;
141 (iii) rendering in this state any service described in any of the
142 subparagraphs of subdivision (2) of this subsection; (iv) maintaining,
143 occupying or using, permanently or temporarily, directly or indirectly,
144 through a subsidiary or agent, by whatever name called, any office,
145 place of distribution, sales or sample room or place, warehouse or
146 storage point or other place of business or having any representative,
147 agent, salesman, canvasser or solicitor operating in this state for the

148 purpose of selling, delivering or taking orders; (v) notwithstanding the
149 fact that retail sales are made from outside this state to a destination
150 within this state and that a place of business is not maintained in this
151 state, engaging in regular or systematic solicitation of sales of tangible
152 personal property in this state by the display of advertisements on
153 billboards or other outdoor advertising in this state, by the distribution
154 of catalogs, periodicals, advertising flyers or other advertising by
155 means of print, radio or television media, or by mail, telegraphy,
156 telephone, computer data base, cable, optic, microwave or other
157 communication system, for the purpose of effecting retail sales of
158 tangible personal property, provided one hundred or more retail sales
159 from outside this state to destinations within this state are made
160 during the twelve-month period ended on the September thirtieth
161 immediately preceding the monthly or quarterly period with respect to
162 which liability for tax under this chapter is determined; (vi) being
163 owned or controlled, either directly or indirectly, by a retailer engaged
164 in business in this state which is the same as or similar to the line of
165 business in which the retailer so owned or controlled is engaged; (vii)
166 being owned or controlled, either directly or indirectly, by the same
167 interests that own or control, either directly or indirectly, a retailer
168 engaged in business in this state which is the same as or similar to the
169 line of business in which the retailer so owned or controlled is
170 engaged; (viii) being the assignee of a person engaged in the business
171 of leasing tangible personal property to others, where leased property
172 of such person is situated within this state and such assignee has a
173 security interest, as defined in subsection (37) of section 42a-1-201, in
174 such property; and (ix) notwithstanding the fact that retail sales of
175 items of tangible personal property are made from outside this state to
176 a destination within this state and that a place of business is not
177 maintained in this state, repairing or servicing such items, under a
178 warranty, in this state, either directly or indirectly through an agent,
179 independent contractor or subsidiary.

180 (B) A retailer who has contracted with a commercial printer for
181 printing and distribution of printed material shall not be deemed to be
182 engaged in business in this state because of the ownership or leasing

183 by the retailer of tangible or intangible personal property located at the
184 premises of the commercial printer in this state, the sale by the retailer
185 of property of any kind produced or processed at and shipped or
186 distributed from the premises of the commercial printer in this state,
187 the activities of the retailer's employees or agents at the premises of the
188 commercial printer in this state, which activities relate to quality
189 control, distribution or printing services performed by the printer, or
190 the activities of any kind performed by the commercial printer in this
191 state for or on behalf of the retailer.

192 (C) A retailer not otherwise a retailer engaged in business in the
193 state who purchases fulfillment services carried on in this state by a
194 person other than an affiliated person, or who owns tangible personal
195 property located on the premises of an unaffiliated person performing
196 fulfillment services for such retailer shall not be deemed to be engaged
197 in business in the state. For purposes of this subparagraph, persons are
198 affiliated persons with respect to each other where one of such persons
199 has an ownership interest of more than five per cent, whether direct or
200 indirect, in the other, or where an ownership interest of more than five
201 per cent, whether direct or indirect, is held in each of such persons by
202 another person or by a group of other persons who are affiliated
203 persons with respect to each other. For purposes of this subparagraph,
204 "fulfillment services" means services that are performed by a person on
205 its premises on behalf of a purchaser of such services and that involve
206 the receipt of orders from the purchaser of such services or an agent
207 thereof, which orders are to be filled by the person from an inventory
208 of products that are offered for sale by the purchaser of such services,
209 and the shipment of such orders to customers of the purchaser of such
210 services.

211 (D) A retailer not otherwise a retailer engaged in business in this
212 state that participates in a trade show or shows at the convention
213 center, as defined in subdivision (3) of section 32-600, shall not be
214 deemed to be engaged in business in this state, regardless of whether
215 the retailer has employees or other staff present at such trade shows,
216 provided the retailer's activity at such trade shows is limited to

217 displaying goods or promoting services, no sales are made, any orders
218 received are sent outside this state for acceptance or rejection and are
219 filled from outside this state, and provided further that such
220 participation is not more than fourteen days, or part thereof, in the
221 aggregate during the retailer's income year for federal income tax
222 purposes.

223 Sec. 6. Subdivision (7) of section 12-430 of the general statutes is
224 repealed and the following is substituted in lieu thereof (*Effective*
225 *October 1, 2005, and applicable to contracts entered into on or after October*
226 *1, 2005*):

227 (7) (A) As used in this section, (i) "nonresident contractor" means a
228 contractor who does not maintain a regular place of business in this
229 state; [and] (ii) "regular place of business" means any bona fide office,
230 factory, warehouse or other space in this state at which a
231 contractor is doing business in its own name in a regular and
232 systematic manner, and which place is continuously maintained,
233 occupied, and used by the contractor in carrying on its business
234 through its employees regularly in attendance to carry on the
235 contractor's business in the contractor's own name, except that
236 "regular place of business" does not include a place of business for a
237 statutory agent for service of process, or a temporary office [at the
238 site of construction] or location used by the contractor only for the
239 duration of the contract, whether or not at the site of construction, or
240 an office maintained, occupied and used by a person affiliated with
241 the contractor; (iii) "contract price" means the total contract price,
242 including deposits, amounts held as retainage, costs for any change
243 orders, or charges for add-ons; and (iv) "person doing business with a
244 nonresident contractor" does not include an owner or tenant of real
245 property used exclusively for residential purposes and consisting of
246 three or fewer dwelling units, in one of which the owner or tenant
247 resides, provided each nonresident contractor doing business with
248 such owner or tenant shall be required to comply with the bond
249 requirements under subparagraph (F) of this subdivision.

250 (B) Any person doing business with a nonresident contractor [shall
251 withhold payment in an amount of five per cent of the contract price
252 and remit such amount as a deposit to the Commissioner of Revenue
253 Services not later than thirty days after the completion of the
254 contract] and making payments of the contract price to such
255 nonresident contractor shall deduct and withhold from such payments
256 an amount of five per cent of such payments, unless such nonresident
257 contractor has furnished a certificate of compliance as described in
258 subparagraph (E) of this subdivision. The amounts so required to be
259 deducted and withheld shall be paid over to the commissioner by the
260 last day of the month following the calendar quarter following the
261 calendar quarter in which the first payment to the nonresident
262 contractor is made, and every calendar quarter thereafter. Each such
263 payment to the commissioner shall be accompanied by a form
264 prescribed by the commissioner. The amount required to be deducted
265 and withheld from the nonresident contractor, when so deducted and
266 withheld, shall be held to be a special fund in trust for the state. No
267 nonresident contractor shall have any right of action against a person
268 deducting and withholding under this subdivision with respect to any
269 moneys deducted and withheld and paid over to the commissioner in
270 compliance with or intended compliance with this subdivision.

271 (C) A nonresident contractor shall request, in writing, that the
272 Commissioner of Revenue Services audit the records of such
273 contractor for a project for which [a deposit was made under
274 subparagraph (B) of this subdivision] amounts were deducted and
275 withheld from such contractor under subparagraph (B) of this
276 subdivision. If such request is not made within three years after the
277 date the final payment of such amounts was made to the
278 commissioner, such contractor waives the right to request such audit
279 and claim a refund of such amounts. The commissioner shall, after
280 receipt of such request, conduct an audit and issue to the nonresident
281 contractor a certificate of no tax due or a certificate of tax due from
282 the nonresident contractor. [Upon] Not later than ninety days after
283 the issuance of a certificate of no tax due, the commissioner shall
284 return [such deposit] to the nonresident contractor the amounts

285 deducted and withheld from such contractor and paid over to the
286 commissioner. Upon issuance of a certificate of taxes due, the
287 commissioner may [pay to the nonresident contractor out of the
288 deposit any excess over the amount] return to the nonresident
289 contractor the amount by which the amounts deducted and
290 withheld and paid over to the commissioner under
291 subparagraph (B) of this subdivision exceed the amount of taxes
292 set forth in the certificate, together with the interest and
293 penalties then assessed.

294 (D) When a person doing business with the nonresident contractor
295 [deposits with] pays over to the Commissioner of Revenue Services
296 [the amount set forth in] amounts deducted and withheld pursuant to
297 subparagraph (B) of this subdivision, [the commissioner shall issue
298 such person a receipt for such amount. Upon the issuance of such
299 receipt, the person doing business with the nonresident contractor]
300 such person shall not be liable for any claim of the nonresident
301 contractor for such [amount] amounts or for any claim of the
302 commissioner for any taxes of the nonresident contractor arising
303 from the activities of the nonresident contractor on the project for
304 which the [deposit was made] amounts were paid over. Such
305 payment shall not relieve the person doing business with the
306 nonresident contractor of such person's liability for use taxes due on
307 purchases of services from such nonresident contractor.

308 (E) When a nonresident contractor enters into a contract with the
309 state, said contractor shall provide the Labor Department with
310 evidence demonstrating compliance with the provisions of chapters
311 567 and 568, the prevailing wage requirements of chapter 557 and any
312 other provisions of the general statutes related to conditions of
313 employment.

314 (F) Not later than one hundred twenty days after the
315 commencement of the contract, or thirty days after the completion of
316 the contract, whichever is earlier, a nonresident contractor may
317 [petition the commissioner to] (i) furnish a guarantee bond in a sum

318 equivalent to five per cent of the contract price, or (ii) deposit with the
319 commissioner a cash bond in a sum equal to five per cent of the
320 contract price, in lieu of the requirements contained in subparagraph
321 (B) of this subdivision. The commissioner may [grant such petition]
322 accept such bond on such terms and conditions as the commissioner
323 may require, and upon acceptance of such bond, shall issue a
324 certificate of compliance to the contractor. The provisions of
325 subparagraph (C) of this subdivision shall apply to such bond, upon
326 completion of the contract, in the same manner as such provisions
327 apply to [the deposit] amounts paid over under subparagraph (B) of
328 this subdivision.

329 (G) Upon the furnishing of a certificate of compliance by the
330 nonresident contractor to the person doing business with a
331 nonresident contractor, such person shall not be liable for any claim of
332 the commissioner for any taxes of the nonresident contractor arising
333 from the activities of such contractor on the project for which the bond
334 was provided. Such certificate of compliance shall not relieve the
335 person doing business with the nonresident contractor of such person's
336 liability for use taxes due on purchases of services from such
337 nonresident contractor.

338 (H) If any person doing business with a nonresident contractor fails
339 to deduct and withhold and pay over to the commissioner amounts
340 under subparagraph (B) of this subdivision, or fails to obtain a
341 certificate of compliance from the nonresident contractor pursuant to
342 subparagraph (G) of this subdivision, such person shall be personally
343 liable for payment of any taxes of the nonresident contractor arising
344 from the activities of such contractor on the project for which such
345 amounts or certificate were required.

346 Sec. 7. Subsection (b) of section 12-233 of the general statutes, as
347 amended by substitute senate bill 1265 of the current session, is
348 repealed and the following is substituted in lieu thereof (*Effective from*
349 *passage*):

350 (b) (1) When it appears that any part of the deficiency for which a

351 deficiency assessment is made is due to negligence or intentional
352 disregard of the provisions of this part or regulations promulgated
353 thereunder, there shall be imposed a penalty equal to ten per cent of
354 the amount of such deficiency assessment, or fifty dollars, whichever is
355 greater. When it appears that any part of the deficiency for which a
356 deficiency assessment is made is due to fraud or intent to evade the
357 provisions of this part or regulations promulgated thereunder, there
358 shall be imposed a penalty equal to twenty-five per cent of the amount
359 of such deficiency assessment. [When] For audits of returns
360 commencing on or after January 1, 2006, when it appears that any part
361 of the deficiency for which a deficiency assessment is made pursuant
362 to section 12-233, as amended by this act, is due to failure to disclose a
363 listed transaction, as defined in Section 6707A of the Internal Revenue
364 Code of 1986, or any subsequent corresponding internal revenue code
365 of the United States, as from time to time amended, on the taxpayer's
366 federal tax return, there shall be imposed a penalty equal to seventy-
367 five per cent of the amount of such deficiency assessment.

368 (2) No taxpayer shall be subject to more than one penalty under this
369 section in relation to the same tax period.

370 Sec. 8. Subsection (a) of section 12-728 of the general statutes, as
371 amended by substitute senate bill 1265 of the current session, is
372 repealed and the following is substituted in lieu thereof (*Effective from*
373 *passage*):

374 (a) (1) After a final return pursuant to the provisions of this chapter
375 is filed, the commissioner shall cause the same to be examined and
376 may make such further audit or investigation or reaudit as the
377 commissioner deems necessary, and if the commissioner determines
378 that there is a deficiency with respect to the payment of any tax due
379 under this chapter, the commissioner shall assess or reassess the
380 additional taxes, penalties and interest due to this state, give notice of
381 such assessment or reassessment to the taxpayer and make demand
382 upon the taxpayer for payment. Not later than sixty days after the
383 mailing of such notice, the taxpayer shall pay to the commissioner, in

384 cash or by check, draft or money order drawn to the order of the
 385 commissioner, the amount of the deficiency. Such amount shall bear
 386 interest at the rate of one per cent per month or fraction thereof from
 387 the date when the original tax became due and payable.

388 (2) When it appears that any part of the deficiency for which a
 389 deficiency assessment is made is due to negligence or intentional
 390 disregard of the provisions of this chapter or regulations adopted
 391 thereunder, there shall be imposed a penalty equal to ten per cent of
 392 the amount of such deficiency assessment. When it appears that any
 393 part of the deficiency for which a deficiency assessment is made is due
 394 to fraud or intent to evade the provisions of this chapter or regulations
 395 adopted thereunder, there shall be imposed a penalty equal to
 396 twenty-five per cent of the amount of such deficiency assessment.
 397 [When] For audits of returns commencing on or after January 1, 2006,
 398 when it appears that any part of the deficiency for which a deficiency
 399 assessment is made is due to failure to disclose a listed transaction, as
 400 defined in Section 6707A of the Internal Revenue Code of 1986, or any
 401 subsequent corresponding internal revenue code of the United States,
 402 as from time to time amended, on the taxpayer's federal tax return,
 403 there shall be imposed a penalty equal to seventy-five per cent of the
 404 amount of such deficiency assessment.

405 Sec. 9. (*Effective from passage*) Notwithstanding the provisions of
 406 chapter 208 of the general statutes, with respect to an income year
 407 ending on September 30, 2004, for any taxpayer included in industry
 408 group 3363 of the North American Industry Classification System,
 409 United States, 1997 edition, the extended due date to file a return
 410 pursuant to said chapter 208 shall be July 1, 2005."

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2005	12-285b(a)

Sec. 2	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-213(a)(20)
Sec. 3	<i>from passage</i>	12-293a(b)
Sec. 4	<i>October 1, 2005, and applicable to returns for periods commencing on or after October 1, 2005</i>	12-330d
Sec. 5	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-407(a)(15)
Sec. 6	<i>October 1, 2005, and applicable to contracts entered into on or after October 1, 2005</i>	12-430(7)
Sec. 7	<i>from passage</i>	12-233(b)
Sec. 8	<i>from passage</i>	12-728(a)
Sec. 9	<i>from passage</i>	New section